



PUBLIC NOTICE

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DA 21-780
July 1, 2021

AUCTION OF AM AND FM BROADCAST CONSTRUCTION PERMITS

114 BIDDERS QUALIFIED TO PARTICIPATE IN AUCTION 109

ONE FM BROADCAST CONSTRUCTION PERMIT REMOVED FROM AUCTION 109

AU Docket No. 21-39

1. By this Public Notice, the Office of Economics and Analytics (OEA) and the Media Bureau (MB) identify 114 applicants that are qualified to bid in Auction 109.¹ Auction 109 will offer four AM construction permits and 135 FM construction permits. Bidding in Auction 109 is scheduled to begin on Tuesday, July 27, 2021.² This Public Notice contains bidding instructions and other important information regarding Auction 109, including the announcement that one FM construction permit, MM-FM1229-A, Channel 296A, Livingston Manor, NY, has been removed from the Auction 109 inventory and will not be available in this auction; an updated listing of the permits available in this auction may be found in Attachment A to this Public Notice. This Public Notice also addresses the continuing obligations and auction procedures for all Auction 109 applicants, including those that have not qualified to bid.

I. QUALIFIED BIDDERS AND NON-QUALIFIED APPLICANTS

2. The short-form applications (FCC Form 175) to participate in Auction 109 have been reviewed for completeness and compliance with the Commission’s rules, and the applicants have been classified into the categories listed below.

Qualified	114 applicants
Non-Qualified	44 applicants

3. **Qualified Bidders.** Attachment B to this Public Notice lists the name of each applicant that is a qualified bidder, each qualified bidder’s upfront payment amount, and its maximum eligibility in bidding units. Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the

¹ A copy of this Public Notice will be sent by overnight delivery to the contact person listed on the FCC Form 175 for each Auction 109 applicant. All applicants are asked to make sure that the contact address provided in their short-form application is accurate and is a location capable of accepting packages that will require a signature.

² See *Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, DA 21-361 (OEA/MB Apr. 1, 2021) (*Auction 109 Procedures Public Notice*); see also *Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Status of Short-Form Applications to Participate in Auction 109*, Public Notice, DA 21-628 (OEA/MB June 3, 2021) (*Auction 109 Status Public Notice*).

auction and timely submitted a sufficient upfront payment as required by the Commission's competitive bidding rules.³

4. In order to participate effectively in the auction, each qualified bidder should again carefully review the auction rules, procedures, and other information described in the *Auction 109 Procedures Public Notice* and subsequent public notices.⁴ These public notices and other documents related to Auction 109 are available on the Auction 109 website in the Releases section at www.fcc.gov/auction/109. This Public Notice provides additional guidance for qualified bidders.

5. Attachment C to this Public Notice lists the construction permits specified on each qualified bidder's short-form application (FCC Form 175). Attachment C also shows, for each qualified bidder claiming a new entrant bidding credit, whether the applicant claims a bidding credit of 35% or 25%.

6. As explained in the *Auction 109 Procedures Public Notice*, an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid or in fact places a bid.⁵

7. **Non-Qualified Bidders.** Attachment D to this Public Notice lists each applicant that submitted an FCC Form 175 but did not qualify to bid in Auction 109.⁶ All applicants, including those that have not qualified to bid, remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions.⁷

II. REMOVAL OF FM BROADCAST CONSTRUCTION PERMIT

8. One FM construction permit, MM-FM1229-A, Channel 296A, Livingston Manor, NY, has been removed from the Auction 109 inventory and will not be available for bidding in this auction. MB has determined that the allotment for MM-FM1229-A was not properly added to the Table of FM Allotments and was therefore erroneously included in the Auction 109 inventory.⁸ Accordingly, this FM permit is hereby removed from Auction 109. Attachment A to this Public Notice supersedes Attachment A to the *Auction 109 Procedures Public Notice* and does not include the removed

³ See 47 CFR §§ 1.2105, 1.2106, 1.2112, 73.5002. Under the Commission's two-phase auction application process, a winning bidder must submit a long-form application after the close of bidding in an auction to demonstrate its qualifications to hold a Commission license or construction permit and entitlement to a new bidding credit, if claimed in its short-form application. Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or construction permit. See 47 CFR §§ 1.2107, 1.2109; see also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2376-77, paras. 163-168 (1994). Commission staff considers an applicant's qualifications after the auction during the long-form application process. In the event that an applicant is found unqualified to be a Commission licensee or ineligible for any claimed bidding credit, it will be liable for any obligations incurred as a result of its participation in the auction. See generally 47 CFR § 1.2109.

⁴ *Auction 109 Procedures Public Notice*, at 13-46, paras. 37-167; see also *Auction 109 Status Public Notice*, at 3-11, paras. 7-31.

⁵ *Auction 109 Procedures Public Notice*, at 8, para. 21 & nn.20-21.

⁶ This list includes one applicant previously disqualified because the application was rejected. See *Auction 109 Status Public Notice*, at 2-3, para. 6; see also *Auction 109 Procedures Public Notice*, at 24, 28, paras. 71 & nn.131-34, 88 & n.152.

⁷ See 47 CFR §§ 1.2105(c), 73.5002(d); see also *Auction 109 Procedures Public Notice*, at 13-17, paras. 37-52.

⁸ 47 CFR § 73.202.

construction permit. The updated Attachment A will also be posted on the Auction 109 website at www.fcc.gov/auction/109.

III. REGISTRATION AND ACCESS TO THE AUCTION BIDDING SYSTEM

A. Registration Materials

9. All qualified bidders have been automatically registered for the auction. Registration materials will be sent by overnight delivery to the contact person at the contact person's address identified in the qualified bidder's FCC Form 175.⁹ The contact person for each qualified bidder must distribute each SecurID token to the specific authorized bidder as identified on each envelope contained in the registration materials package. Upon receipt, each qualified bidder should be in possession of the following:

- Three RSA SecurID® tokens (SecurID tokens);¹⁰
- A web address and instructions for accessing and logging in to the FCC auction bidding system;
- An FCC assigned username (user ID) for each authorized bidder; and
- The FCC Auction Bidder Line telephone number.

10. A qualified bidder must have the above-referenced registration materials to participate in the mock auction and to bid in Auction 109.¹¹ Any qualified bidder listed in Attachment B of this Public Notice that has not received the registration mailing **by 12:00 noon Eastern Time (ET) on Tuesday, July 20, 2021**, must contact the Auctions Hotline at (717) 338-2868. Receipt of the registration mailing is crucial to participating in the mock auction and the actual auction. Each qualified bidder is responsible for ensuring that it has received all of the registration materials listed above.

11. Each qualified bidder is solely responsible for ensuring the security and functionality of its computer systems, Internet connection(s), and its registration materials, in addition to ensuring that only authorized bidders place bids on its behalf. The Commission assumes no responsibility or liability for these matters. **WARNING: Any unauthorized individual or entity accessing or tampering with an FCC or other government computer system will be prosecuted to the full extent of the law.**

B. Registration Material Replacement

12. In the event that a qualified bidder's SecurID tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's FCC Form 175 may request replacements. To request replacements for these items, call the Auction Bidder Line at the telephone number provided in the registration materials, or the Auction Hotline at (717) 338-2868.

⁹ This package will require a signature for delivery to confirm receipt by the applicant. The person signing for the package does not need to be the contact person identified in the qualified bidder's short-form application.

¹⁰ Each qualified bidder will be issued three SecurID tokens. A qualified bidder with three authorized bidders is issued three SecurID tokens. A qualified bidder with two authorized bidders will be issued a SecurID token for each of its authorized bidders, plus one extra SecurID token. A qualified bidder with one authorized bidder is issued a SecurID token for its one authorized bidder, plus two extra SecurID tokens. The extra SecurID token(s) cannot be used unless the contact person, certifier, or an authorized bidder for the qualified bidder contacts the FCC to activate the extra token for a specific additional authorized bidder or for an authorized bidder whose SecurID token has been lost or damaged.

¹¹ The contact person is responsible for distributing each SecurID token to the specific authorized bidder associated with each token, as well as distributing the relevant information in the registration materials necessary for the authorized bidder to establish its access to the bidding system.

C. Access to the Auction Bidding System

13. We will conduct the mock auction and bidding in Auction 109 electronically over the Internet and will provide the option of telephonic bidding using the Auction Bidder Line. Each qualified bidder will receive in its registration materials the web address for accessing the FCC auction bidding system and the phone number for the Auction Bidder Line.

14. Each authorized bidder must have his or her own activated SecurID token to access the FCC auction bidding system and place bids electronically or by telephone in the mock auction and Auction 109. For security purposes, the SecurID tokens and the instructions are sent only to the contact person at the contact address listed on the qualified bidder's FCC Form 175. Please note that each SecurID token is tailored to a specific auction and for a specific authorized bidder. SecurID tokens issued for other auctions or obtained from a source other than the Commission will not work for Auction 109.

15. All bidders should carefully review the FCC Auction Bidding System User Guide, which is accessible in the "Education" section of the Auction 109 webpage at www.fcc.gov/auction/109.

16. There are minimum system requirements for accessing the FCC auction bidding system. Bidders must access the FCC auction bidding system over the Internet. To use the FCC auction bidding system, each applicant must have the following:

- Web browser, either of the following is recommended:
 - Google Chrome™ 90 or higher
 - Mozilla® Firefox
- Operating system:
 - Microsoft® Windows® 8.1 or Windows® 10; or Apple® Mac OS X® 10.14 or higher
- Access to the Internet
- 1366 x 768 or greater screen resolution¹²

Smartphones and tablets are not supported.

17. Each user should test his or her computer configuration and browser(s) with the FCC auction bidding system in advance of the auction—for example, during the mock auction. Any user attempting to access the FCC auction bidding system with a computer configuration or device that does not meet the requirements listed above and in the user guide is solely responsible for any resulting failure to access the auction bidding system, failure to do so in a timely manner, or failure of the bidding system to process the user's attempted bidding or other actions (even if it appears to the user that such actions were completed properly).

18. Any bidder may use the Auction Bidder Line as an alternative method of bidding in the mock auction and Auction 109.¹³ The mock auction provides an opportunity for bidders to bid using the Auction Bidder Line and to become familiar with that process and the time required.

19. Qualified bidders choosing to bid telephonically during the mock auction and Auction 109 should initiate their calls as early as possible during a round. Telephonic bid assistants must use a

¹² Other screen sizes will work, but a minimum of 1366 x 768 is required to fit all of the information on a single screen without horizontal scrolling. If all of the information cannot fit on your display, you can either zoom out using your internet browser or scroll right and left using the scroll bars. To adjust the zoom, hold down the control ("ctrl") key and use the "+" and "-" keys to zoom in and out.

¹³ The Auction Bidder Line telephone number will be supplied in the registration materials sent to each qualified bidder.

script, and the length of a call to place bids may vary depending on the complexity and number of bids.¹⁴ Calls placed late in the round might not provide enough time for bids to be entered before the round ends.

20. SecurID tokens can be recycled.¹⁵ We strongly encourage bidders to return the tokens to the Commission. We will provide pre-addressed stamped envelopes to return the tokens once bidding has concluded.

D. Bidding Contingency Plan

21. Prior to the start of the auction, each bidder should develop comprehensive contingency plans that can be quickly implemented in case difficulties arise when participating in the auction. While the Commission will correct any problems within Commission controlled facilities, each bidder is solely responsible for anticipating and overcoming any other problems that arise, such as bidder computer failures or other technical issues; loss of or problems with data connections, telephone service, or power; adverse local weather conditions; unavailability of its authorized bidders; or the loss or breach of confidential security codes.

22. A qualified bidder should ensure that each of its authorized bidders can access and place bids in the FCC auction bidding system, without relying upon the same computer. Contingency plans will ideally include arrangements for accessing and placing bids in the FCC auction bidding system from one or more alternative locations.

23. We remind bidders that their contingency plans might include, among other arrangements, calling the Auction Bidder Line. If a bidder encounters a situation in which it must implement its backup plan and call the Auction Bidder Line, it should do so as soon as possible and as early in the round as possible. Calling at the beginning of a round will help ensure that the call can be completed before the end of the round. Failure to call early in the round may affect the bidder's ability to submit some or all of its bids before the round closes. Even if a bidder does not plan to bid using the Auction Bidder Line, we encourage all bidders to do so at least once during the mock auction.

24. If for any reason a bidder fails to submit all its bids before the round closes, and fails to meet the requisite activity level, an activity rule waiver will be used, if any remain, or the bidder's eligibility will be reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.¹⁶ We will not restore any portion of a bidder's lost bidding eligibility.

IV. EDUCATIONAL MATERIALS AND IMPORTANT UPCOMING EVENTS AND DATES

25. Below we provide information regarding the availability of educational and informational materials, and the opportunity for qualified bidders to participate in a mock auction prior to the start of bidding in Auction 109. The documents described below will be available in the Education section of the Auction 109 website at www.fcc.gov/auction/109, where they will remain accessible for reference.

A. FCC Auction Bidding System User Guide

26. The FCC Auction Bidding System User Guide describes the features and functionality of the bidding system that will be used to bid in Auction 109. The user guide will be accessible in the "Education" section of the Auction 109 website at www.fcc.gov/auction/109. We will email a link to access and download the user guide to each authorized bidder and to the contact person listed on the

¹⁴ Because the length of a call to place bids may vary, the bidder should initiate its call a minimum of ten minutes prior to the scheduled end of the bidding round.

¹⁵ A SecurID token can only be recycled if it is returned to the Commission in good condition with nothing written or glued on it.

¹⁶ *Auction 109 Procedures Public Notice*, at 36-39, paras. 121-135.

qualified bidder's FCC Form 175. Additionally, the user guide will remain available and accessible on the Auction 109 website for reference. Bidders are encouraged to read the user guide prior to participating in the mock auction in order to familiarize themselves with the bidding system.

B. Auction Tutorial

27. The online auction tutorial made available on April 14, 2021, not only provided information about pre-auction procedures but also provides information about the auction procedures as well as how the FCC auction bidding system reflects those procedures. The tutorial allows viewers to navigate the presentation outline, review written notes, and listen to an audio recording of the notes. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission auctions and licensing staff, and screen shots of the FCC auction bidding system. The online tutorial is accessible from the "Education" tab of the Auction 109 website at www.fcc.gov/auction/109. The tutorial will remain available and accessible on the Auction 109 website for reference.

C. Mock Auction

28. All qualified bidders in Auction 109 will have the opportunity to participate in the mock auction on Friday, July 23, 2021. We strongly encourage each qualified bidder in Auction 109 to participate in the mock auction as it provides an opportunity for the bidder to become familiar with the FCC auction bidding system and the telephonic process, to test its contingency plans, and to ask Commission auction staff and technical support staff questions about the system and auction conduct.

29. A qualified bidder can access the mock auction at the web address provided to qualified bidders in the registration materials. Bidders choosing to bid electronically should review the FCC Auction Bidding System User Guide. Any qualified bidder who wishes to place bids by telephone should use the Auction Bidder Line telephone number supplied in the Auction 109 registration materials.

30. The set-up of the mock auction will differ in some aspects from the set-up for bidding in Auction 109. A qualified bidder's assigned construction permits and eligibility in the mock auction will not represent the actual construction permits for which it is qualified to bid or its eligibility based on its actual upfront payment. The mock auction will include two of the four AM construction permits (MM-AM173-C and MM-AM174-D) and 18 of the 136 FM construction permits (MM-FM1067-C through MM-FM1130-A), and will otherwise follow the rules governing Auction 109.¹⁷ The FCC auction bidding system will assume that each bidder submitted an upfront payment sufficient to give initial (maximum) eligibility (as measured in bidding units) to bid on all 20 of those construction permits. The mock auction will simulate the start of the auction, and each bidder will be required to be active on 80% of its current bidding eligibility. If a bidder does not meet this requirement, an activity rule waiver will be automatically applied (if any waivers are available) or its current eligibility will be permanently reduced (if no waivers remain), possibly eliminating it from further bidding in the mock auction. A bidder should take advantage of the mock auction to practice taking actions it might wish to take during Auction 109.

31. The mock auction bidding schedule for Friday, July 23, 2021, will be as follows:

Mock Round 1	10:00 a.m.	-	11:00 a.m. ET
Mock Round 2	12:00 p.m.	-	12:30 p.m. ET
Mock Round 3	2:00 p.m.	-	2:30 p.m. ET
Mock Round 4	3:00 p.m.	-	3:30 p.m. ET
Mock Round 5	4:00 p.m.	-	4:15 p.m. ET

¹⁷ The mock auction's set of permits will be the first two AM and the first eighteen FM construction permits listed in Attachment A of this Public Notice.

V. AUCTION INFORMATION**A. Bidding Schedule**

32. Beginning on Tuesday, July 27, 2021, and continuing until further notice, we will conduct Auction 109 with four rounds of bidding each business day as follows:

Bidding Round	10:00 a.m.	-	11:00 a.m. ET
Bidding Round	12:00 p.m.	-	1:00 p.m. ET
Bidding Round	2:00 p.m.	-	3:00 p.m. ET
Bidding Round	4:00 p.m.	-	5:00 p.m. ET

33. We will set the pace of the auction based upon our assessment of the auction's progress. We will provide notice of any and all subsequent schedule changes by announcement in the FCC auction bidding system and the Public Reporting System (PRS) during the course of the auction.

B. Auction Announcements

34. The Commission will post pertinent auction information as announcements in the FCC auction bidding system. Each bidder should routinely check for announcements each time it enters the auction bidding system and should click on and read the entirety of each announcement carefully. Announcements convey important auction information including, but not limited to, bidding schedule changes.

C. Bid Amounts

35. For each construction permit in Auction 109, the FCC auction bidding system will provide a minimum bid amount, as previously announced, and eight additional bid amounts from which to choose (for a total of nine bid amounts).¹⁸ While a bidder can change the amount of or remove new bids during a round, it cannot do so once a round ends. We caution each bidder to select its bid amounts carefully because each bidder assumes a binding obligation to pay the full bid amount, even if the bid was mistakenly or erroneously made.¹⁹ Moreover, no bidder will be permitted to withdraw any of its bids submitted in a prior round in Auction 109.²⁰

36. OEA and MB retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, the number of acceptable bid amounts, and the parameters of the formulas used to calculate bid amounts if we determine that circumstances so dictate.²¹ We also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. If we exercise this discretion to make any of these changes, we will alert bidders by announcement in the FCC auction bidding system.²²

D. Watchlists

37. A qualified bidder may create watchlists containing construction permits of its own choosing, and specific construction permits may appear in multiple watchlists. The registration materials

¹⁸ *Auction 109 Procedures Public Notice*, at 40-43, paras. 142-50. Attachment A of this Public Notice lists the minimum opening bid amount for each construction permit in Auction 109.

¹⁹ See 47 CFR § 1.2104(g).

²⁰ *Auction 109 Procedures Public Notice*, at 44, para. 156.

²¹ *Id.*, at 42-43, paras. 149-150.

²² *Id.*

will provide a date when access to the FCC auction bidding system will become available, and a bidder may begin creating its watchlists at that time. Instructions for creating watchlists are provided in the FCC Auction Bidding System User Guide. Please note that watchlists created in the mock auction will be for the mock auction only. Bidders will need to create new watchlists for bidding in Auction 109.

E. Round Results

38. Round results will be available approximately ten minutes after the close of each round.

39. Two types of reports will be available to qualified bidders during the auction: (1) publicly available information, and (2) bidder-specific information available only to that bidder when logged in to the FCC auction bidding system. The public information will be available on the Public Reporting System at auctiondata.fcc.gov for which there is a link in the Results section of the Auction 109 website at www.fcc.gov/auction/109. When a bidder is logged in to the FCC auction bidding system, it will have access to a record of the bids it placed by using the *Round Summary* feature and will have access to the results of its bids by using the *Posted Results* feature. These features can be accessed using the links in the navigation bar of the FCC auction bidding system.

40. Detailed instructions for reviewing and downloading round results are provided in the FCC Auction Bidding System User Guide. The user guide will be available in electronic form in the “Education” section of the Auction 109 website at www.fcc.gov/auction/109.

F. Bidder Questions During Auction 109 and the Mock Auction

41. Commission auction staff and technical support staff will be available during the auction and the mock auction. Only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the qualified bidder’s FCC Form 175 should call on behalf of a bidder. When calling, the person should state that he or she is calling on behalf of a bidder with a time-sensitive auction question. To place bids by telephone or to ask questions during the auction, a bidder must use the FCC Auction Bidder Line telephone number supplied in the registration materials and have his or her login information and SecurID token available. Otherwise, a bidder should refer to the contact information provided in Section VIII, Contact Information, below.

G. Bidder Suggestions

42. A bidder may submit questions or suggestions to the Commission staff concerning Auction 109 or future auctions, by using the *Messages* feature in the FCC auction bidding system.²³ However, this is not an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or placing bids. Any time-sensitive questions should be directed to the Auction Bidder Line. Commission staff considers all suggestions, but may not always provide an individualized response.

VI. APPLICANT CONTINUING OBLIGATIONS

A. Duty to Maintain Accurate Information in Short-Form Applications

43. Each applicant must maintain the accuracy and completeness of information furnished in its short-form application (FCC Form 175), including any attachments, as required by section 1.65(a) of the Commission’s rules.²⁴ Section 1.2105(b)(4) of the rules requires an applicant in a competitive bidding

²³ To access the *Messages* feature, select the Messages link on the navigation pane of the FCC auction bidding system. For information on how to use this feature, please see the FCC Auction Bidding System User Guide.

²⁴ See 47 CFR § 1.65(a). For more information on making minor modifications to an existing application, see “Modifications to an FCC Form 175” in the *Auction 109 Procedures Public Notice*, at 24-25, paras. 72-75, Attachment B, at 18-19, paras. 102-06.

proceeding to furnish additional or corrected information within five business days of a significant occurrence, or to amend its short-form application no more than five business days after the applicant becomes aware of the need for amendment.²⁵ The Commission has established a five-day reporting requirement to facilitate the auction process, by making the information available promptly to all participants, and enabling OEA and MB to act expeditiously on those changes when such action is necessary.²⁶ Therefore, an applicant must amend its short-form application to furnish additional or corrected information as promptly as possible, and in no case more than five business days after the applicant becomes aware of the need for amendment, or five business days after the reportable event occurs, whichever is later.²⁷ Further, an applicant is obligated to amend its pending application even if the reported change is considered to be a major modification that may result in the dismissal of its application.²⁸ For example, changes that cause a loss of or a reduction in the percentage of bidding credit as specified on the FCC Form 175 as originally submitted must be reported immediately, and no later than five business days after the change occurs.²⁹

44. An applicant seeking to provide additional or updated information must modify its short-form application electronically and submit a letter summarizing the change by email to the attention of the Auctions Division Chief at auction109@fcc.gov. The email summarizing the change must include a subject or caption referring to Auction 109 and the name of the applicant.³⁰ Questions about application modifications should be directed to the Auctions Division at (202) 418-0660.

45. As described in the Commission's rules, an applicant may make only minor administrative corrections to its short-form application (e.g., deletion and addition of authorized bidders or changes to certain contact information).³¹ An applicant should not use the auction application system outside of the initial and resubmission filing windows to make changes to its short-form application for other than such minor administrative changes.³² A major modification is not permitted after the initial short-form application filing deadline. A major modification includes a change of technical proposal, newly claimed or increased bidding credit, or changing control of the applicant.³³ Each applicant must

²⁵ 47 CFR §§ 1.2105(b)(4); *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, WT Docket No. 10-18, Order, 25 FCC Rcd 521, 523, para. 8 (2010) (*Part 1 Procedural Amendments Order*); see also 47 CFR § 1.65(b), 1.2105(c)(4).

²⁶ *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523, paras. 7-8.

²⁷ See 47 CFR § 1.2105(b)(4); see also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 521.

²⁸ *Auction 109 Procedures Public Notice*, at 24-25, para. 73.

²⁹ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rule Making, 25 FCC Rcd 1583, 1611-14, paras. 57-63 (2010); *Vermont Tel. Co., Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130 (EB 2011).

³⁰ We request that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

³¹ See 47 CFR § 1.2105(b).

³² During all phases of the application process, an applicant has electronic access to its Form 175 to make certain administrative changes, including updates to: applicant address, responsible party information, contact information, authorized bidders, and bidding option (telephonic or electronic). Auction applicants are not permitted to make a change to the following data fields after the short-form application filing deadline: applicant name, legal classification, certifier, bidding credit, and construction permit selection.

³³ See 47 CFR § 1.2105(b)(2). See also, e.g., *Koch Broadcasting Corp. and Birach Broadcasting Corp.*, Letter Order, 21 FCC Rcd 147 (WTB/MB 2006) (dismissing short-form application filed for Auction 84 due to major amendment changing control).

clearly state the nature of the change in an amendment to its short-form application and in the summary letter referenced above.

B. Due Diligence

46. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on its valuation of the construction permits in Auction 109. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that this FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. These conditions include, but are not limited to, the established authority of the Commission to modify the terms of FCC licenses and other authorizations (whether awarded through competitive bidding or otherwise) through rulemaking and adjudicative proceedings.

47. OEA and MB strongly encourage each potential bidder to conduct its own research prior to the beginning of bidding in Auction 109 in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect its decision to continue participating in the auction. Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect its ability to bid on, otherwise acquire, or make use of any specific construction permit available in Auction 109. In addition, each potential bidder should perform sufficient technical analyses or refresh its previous analyses to assure itself that, should it be a winning bidder for any Auction 109 construction permit, it will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements. We strongly encourage each qualified bidder to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, to confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding any applicable federal, state, and local requirements.³⁴

48. Each participant should continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auction 109 Procedures Public Notice* under Section III.A.³⁵ For example, qualified bidders should note the short-spacing restrictions for FM allotment MM-FM1192-B, Channel 300B, at Sacramento, California.³⁶ In addition, the Media Bureau has protected the parameters of the four previously-licensed AM stations that were on the relevant frequencies in the St. Louis area.³⁷

C. Prohibition of Certain Communications

49. OEA and MB remind applicants that the rules prohibiting certain communications set forth in sections 1.2105(c) and 73.5002(d) of the Commission's rules apply to each applicant that filed a short-form application in Auction 109.³⁸ Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, all applicants are prohibited from cooperating or collaborating with respect to, or communicating with or disclosing to each other in any manner, the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.³⁹ An "applicant" includes all controlling interests of the entity

³⁴ See 47 CFR pt. 1, subpart I.

³⁵ See *Auction 109 Procedures Public Notice*, at 25-27, paras. 76-81.

³⁶ Additional information about these short-spacing restrictions are provided in *Auction 109 Procedures Public Notice*, at 26, n.145.

³⁷ Additional information about restrictions related to these four previously-licensed AM stations are provided in the *Auction 109 Procedures Public Notice*, at 26, para. 78 & nn.147-49.

³⁸ 47 CFR §§ 1.2105(c)(1), 73.5002(d).

submitting a short-form application to participate in the auction, including all officers and directors of that entity and all holders of interests amounting to 10% or more of the entity submitting a short-form application.⁴⁰ A party that submits an auction application becomes an “applicant” under the rule at the application filing deadline and that status does not change based on subsequent developments.⁴¹

50. This prohibition took effect as of the short-form application filing deadline, which for Auction 109 was May 11, 2021, at 6:00 p.m. ET, and ends at the post-auction down payment deadline, which will be announced in a future public notice.⁴² **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**⁴³ For further information on the prohibition, applicants should refer to the *Auction 109 Procedures Public Notice*.⁴⁴

D. Disclosure Obligations and Possible Sanctions

51. Section 1.2105(c)(4) requires each auction applicant to report a prohibited communication or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under section 1.65.⁴⁵ The Commission has clarified that each applicant’s obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.⁴⁶

52. *Reporting Prohibited Communication.* Any party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), 1.2105(b)(4), or 1.2105(c)(4) must take care to ensure that any such report does not itself give rise to a violation of section 1.2105(c). To minimize the risk of inadvertent dissemination of a report of a potential prohibited communication, section 1.2105(c)(4) requires a party to file only a single report with the Chief of the Auctions Division.⁴⁷ In Auction 109, any such report must be filed according to the instructions set forth in the *Auction 109 Procedures Public Notice*.⁴⁸ Any such report must be filed immediately, and in no case later than five business days after the communication occurs.

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³⁹ *Id.* § 1.2105(c).

⁴⁰ 47 CFR § 1.2105(c)(5)(i).

⁴¹ *Auction 109 Procedures Public Notice*, at 13, para. 38.

⁴² 47 CFR § 1.2105(c)(1).

⁴³ See, e.g., *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an “applicant” for purposes of the rule and remains subject to the prohibition on certain communications until the applicable down payment deadline.

⁴⁴ *Auction 109 Procedures Public Notice*, at 13-17, paras. 37-52.

⁴⁵ 47 CFR § 1.2105(b); see also *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Seventh Report and Order, 16 FCC Rcd 17546, 17553-55, paras. 13-17 (2001).

⁴⁶ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007).

⁴⁷ 47 CFR § 1.2105(c)(4); *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4.

⁴⁸ See *Auctions 109 Procedures Public Notice*, at 16-17, para. 49-50.

53. Any applicant found to have violated section 1.2105(c) may be subject to sanctions.⁴⁹ In addition, we remind each applicant that it is subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and it may be prohibited from participating in future auctions, among other sanctions.⁵⁰

E. Submission of Auction-Related Filings

54. An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

55. A party wishing to submit a request, a complaint, or other information concerning Auction 109 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by email to the attention of the Auctions Division Chief at auction109@fcc.gov. The Commission occasionally receives complaints regarding specific bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

56. Finally, parties wishing to make suggestions concerning Auction 109 or future auctions should present such ideas using the *Messages* feature of the FCC auction bidding system. As mentioned above, however, this feature is not an appropriate mechanism for asking time-sensitive questions that need an immediate response. Commission staff considers all suggestions, but may not always provide an individualized response.

F. Ex Parte Rule

57. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.⁵¹

VII. POST-AUCTION PROCEDURES

58. To ensure prompt receipt of time-sensitive Commission communications, OEA and MB urge each applicant to verify now the accuracy and completeness of the contact information in its Form 175. Corrections to contact information in a Form 175 should be made promptly in preparation for post-auction procedures.

59. Shortly after bidding has ended, the Commission will release a public notice declaring bidding finished, identifying the winning bidders, and establishing the deadlines for submitting down payments and final payments.⁵² Each winning bidder will have ten business days following the release of

⁴⁹ 47 CFR §§ 1.2105(c), 1.2109(d).

⁵⁰ See *id.* § 1.2109(d).

⁵¹ See *Commission Announces that Mutually Exclusive "Short Form" Applications (Form 175) to Participate in Competitive Bidding Process ("Auctions") Are Treated as Exempt for Ex Parte Purposes*, Public Notice, 9 FCC Rcd 6760 (1994). See also 47 CFR § 1.1202(d)(1) Note 1.

⁵² See *Auction 109 Procedures Public Notice*, at 44-46, paras. 159-67.

that public notice to make down payments. Final payments will be due ten business days after the deadline for submitting down payments for this auction.

60. Each winning bidder must electronically file a complete and accurate long-form application (FCC Form 2100, Schedule 301-FM, Commercial FM Station Construction Permit Application, or FCC Form 301, Application for Construction Permit for a Commercial Broadcast Station), including required exhibits, along with the applicable application filing fee, which is in addition to the winning bid amount, for each construction permit won through Auction 109 within the time period announced in the auction closing public notice.⁵³ Further filing instructions will be provided to auction winners at the close of the auction.⁵⁴ Further information regarding these post-auction procedures is contained in the *Auction 109 Procedures Public Notice* and will be provided in the public notice announcing the winning bidders.⁵⁵

VIII. CONTACT INFORMATION

61. Additional information for applicants is available at the Auction 109 website (www.fcc.gov/auction/109).

62. For further information concerning Auction 109, please contact:

General Auction Information

General Auction Questions

FCC Auctions Hotline

(888) 225-5322, option two; or
(717) 338-2868

Auction 109 Process and Procedures

Bidding Procedures

Auction Schedule

Auctions Division, OEA

Auctions Hotline (717) 338-2868

Auction 109 Legal Information

Auction Rules, Policies, Regulations, Including

Reports of section 1.2105(c) Violations and

Application Modifications

Auctions Division, OEA

(202) 418-0660

Lynne Milne (Attorney)

Lyndsey Grunewald (Attorney)

⁵³ See 47 CFR §§ 1.2107, 73.5005(a). See also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, MM Docket No. 97-234, 13 FCC Rcd 15920, 15984-85, paras. 163-64 (1998). Commission rules also require that a winning bidder in a commercial broadcast spectrum auction submit an application filing fee with its post-auction long-form application. See 47 CFR §§ 1.1104, 1.2107(c). The application filing fee must be paid in addition to the winning bid amount. The Commission recently adopted a new long-form application filing fee that includes an amount to recover costs for processing the short-form application. *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 15089, 15118 - 15122, paras. 91 - 104 (2020) (amending filing fee schedule for AM and FM long-form applications). Amended section 1.1104, which specifies filing fees for AM and FM long-form applications, is not yet in effect. The long-form application filing fee that is in effect when such form is filed will be the applicable fee. See also *Auction 109 Procedures Public Notice*, at 44-45, para. 162 & n.224.

⁵⁴ See 47 CFR §§ 1.2107, 1.2109(a), 73.3571, 73.3573, 73.5003, 73.5005, 73.5006(d).

⁵⁵ See *Auction 109 Procedures Public Notice*, at 44-46, paras. 159-67; see also 47 CFR §§ 1.2107, 1.2109(a).

Licensing Information

Service Rules, Policies, Regulations
Licensing Issues, Engineering Issues
Due Diligence, Incumbency Issues

Audio Division, MB

(202) 418-2700
Lisa Scanlan (Attorney)
Tom Nessinger (Attorney)
James Bradshaw (Engineer)

Technical Support

Hardware/Software Issues with Electronic Filing
or FCC Auction System

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

Payment Information

Instructions for Wiring Upfront Payments and
Completing Form 159

**FCC Revenue & Receivables Operations
Group/Auctions**

Scott Radcliffe at (202) 418-7518
Theresa Meeks at (202) 418-2945
(202) 418-2843 (fax) or email to
RROGWireFaxes@fcc.gov

Press Information

Janice Wise (202) 418-8165

63. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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